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SUBJECT: HUMAN RIGHTS DAY DINNER, PART TWO: ACTIVISTS
DISCUSS PROBLEMS, PROSPECTS FOR PROGRESS IN CHINA

REF: A. BEIJING 4493
 1B. SECSTATE 125694

Classified By: Political Minister Counselor
Aubrey Carlson. Reasons 1.4 (b) and (d).

SUMMARY

11. (C) At a December 9 dinner in commemoration of Human Rights Day and the 60th Anniversary of the Universal Declaration of Human Rights (UDHR), four leading Chinese human rights lawyers and activists discussed China's human rights situation, identifying the lack of an independent judiciary, the tenuous status of grassroots NGOs and Internet restrictions as key human rights concerns. On religion, one participant noted the rapid growth of Christianity but predicted there will be no improvement in the treatment of Falun Gong adherents while former President Jiang Zemin is alive. Guests offered "advice" for approaching the PRC on human rights, with one lawyer advocating that the USG "speak frankly" in public on general principles but raise individual cases "in private." The guests expressed differing views regarding the "inevitability" of an improved human rights situation in China. (See ref A for coverage of other topics discussed, including the "08 Charter" human rights manifesto issued earlier in the day.) End Summary.

HUMAN RIGHTS DAY DINNER

12. (C) Charge hosted a December 9 dinner for four leading Chinese human rights lawyers and activists to commemorate Human Rights Day and the 60th Anniversary of the Universal Declaration of Human Rights (UDHR). (See ref A for attendees' commentary on the "08 Charter.") The four activists: A) Li Dun, legal activist and Professor Emeritus at Tsinghua University's Center for the Contemporary Study of China; B) Mo Shaoping, rights lawyer and founder of one of China's first law firms; C) Wu Ge, rights lawyer and activist who uses litigation strategies to promote change in China; and D) Zhang Dajun, founder of the Transition Institute, an independent think tank that focuses on links between economic liberalization and social and political activism. (See ref A for more detailed biographic information.)

NO JUDICIAL INDEPENDENCE

13. (C) Dinner guests were in agreement that the lack of judicial independence in China impedes progress on human rights issues. Rights lawyer Mo Shaoping said sensitive cases simply "are not decided by judges." The Chinese Government does not officially categorize a case as "political," instead treating sensitive cases as mere criminal (or often "state secrets") matters. Privately, judges have told Mo that while his arguments in a case are reasonable and have merit, the case is being decided at a "higher political level." This, Mo stated, "proves that

China does not have an independent judiciary." Tsinghua Professor Emeritus Li Dun agreed, stating that judges have a difficult time acting independently, even on less sensitive cases. Rights lawyer Wu Ge noted that Vice President Xi Jinping's influence earlier this year prevented settlement of a case filed against Beijing Party Secretary Liu Qi and the Beijing Organizing Committee for the Olympic Games (BOCOG) for using the "one world, one dream" slogan without compensating the person who claimed to have coined the motto.

The parties were close to settling the case, Wu said, until Vice President Xi Jinping assumed responsibility for the Olympics, at which point Xi stepped in and said there would be "no deal," causing the settlement to collapse and the court to rule against the plaintiff. (NOTE: Wu claimed that Yahoo refused to provide information from its servers that could have corroborated the plaintiff's claim that he submitted the "one world, one dream" slogan to BOCOG via his Yahoo e-mail account.)

JUDICIAL CORRUPTION

¶4. (C) Corruption among judges is another problem that "seriously compromises" China's legal system, according to Tsinghua Professor Emeritus Li Dun, who practiced law in the 1980s but subsequently moved to academia. According to Li, judges today are significantly more corrupt than in the 1980s, when the main challenge facing the legal system was the lack of professional legal training among judges. Li worked on a number of projects to train judges over six years beginning in the late 1990s that were supported by the Ford Foundation. Unfortunately, Li said, the training has been

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"useless," because judges always "reverted" to bad practices upon returning to the system. That proves the problem is systemic, not individual. The systemic pressures on judges from above, as well as the pressure to make money, have made the legal system "at least as corrupt as the rest of the Chinese Government." Li urged the United States to focus less on judicial training programs and instead work to support more grassroots NGOs, a view shared by Zhang Dajun. Mo Shaoping agreed that corruption, political control of the courts, financial pressures and pressure from government officials create serious difficulties not only for judges but also for rights defense lawyers like him. "But I take sensitive cases anyway," Mo said, "because I believe things would be worse if I did not."

NGOS: NEED TO SUPPORT GRASSROOTS GROUPS

¶5. (C) "Grassroots" NGOs, not those affiliated with the Chinese Government, are doing "the real work" in China and require further support, given their "tenuous status," Li Dun stated. Li was critical of foreign foundations, many of which are "playing games" with China by spending large sums of money on projects that have little or no impact. For example, the UNDP, the Global Fund, the Canadian Government and others expend huge resources on Chinese Government-operated NGOs (GONGOs), while "real NGOs" in China at the grassroots level are marginalized, unable to formally register and therefore technically illegal, Li said. He estimated there are 600-800 unregistered grassroots NGOs doing "great work" in the HIV/AIDS field alone. Others are active in the fields of labor and environmental protection. Varying opinions of senior Chinese officials toward NGOs is another challenge, Li said. Leaders like former Vice Premier Wu Yi, Ministry of Environmental Protection Vice Minister Pan Yue and others are "quite supportive" of NGOs. Other officials, however, especially those in charge of "security and personnel issues," are quite suspicious, accusing NGOs of being foreign government tools to "infiltrate" China.

THE INTERNET: TWO STEPS FORWARD, ONE BACK

¶ 6. (C) The Internet is a prime example of China taking "two steps forward and one step back" in areas affecting human rights, rights lawyer Wu Ge said. One can "feel" the government's efforts to tighten Internet and online media controls through the "golden shield" project, Wu said. The State Council Information Office has created a new Internet bureau to "manage" (i.e., "control") the Internet. Nevertheless, the Internet is unlike "traditional media" because online, one can "fight technology with technology." It is "impossible" for a limited number of government officials charged with monitoring the Internet to "fight the wisdom of 100 million netizens," Wu asserted. Mo Shaoping criticized U.S. and French companies for supplying technology used in China's "golden shield" effort. These companies' behavior is similar to "loaning a knife to kill another" (jiedao sharen), Mo said, with the person loaning the knife being just as guilty as the perpetrator of the crime.

CHRISTIANITY GROWING, PROGRESS FOR FLG UNLIKELY

¶ 7. (C) Briefly addressing the state of religious freedom in China, the Transition Institute's Zhang Dajun noted the rapid growth of Christianity. Zhang, himself a Christian and member of a Protestant "house church," said that getting a precise handle on the situation for Chinese Christians is difficult, given the "great diversity" in the Christian community, which is composed of "many independent house churches." What is clear, however, is that the more the Chinese Government tries to control Christianity, the faster it grows, Zhang said, noting that Christianity really started "taking off" in China during the Cultural Revolution.

¶ 8. (C) Turning to the repression of Falun Gong (FLG) members, Zhang said it will be extremely difficult to improve the treatment of FLG adherents while former President Jiang Zemin is alive. Li Dun agreed, noting that there are two views within China of Jiang Zemin's crackdown on the FLG. Some believe Jiang "overreacted," while others say he had "no choice," given that he had been "cornered" by the FLG. (Note: Li said there is a similar split in opinion regarding leaders' decision to crack down on the Tiananmen demonstrators in 1989.) Unfortunately, Li noted, both PRC authorities and FLG followers have taken an "extremely confrontational" approach. Li said he hopes a less confrontational "third way" can be found, but thus far neither side is willing to do so.

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WASHINGTON SHOULD SPEAK FRANKLY, THINK STRATEGICALLY

¶ 9. (C) The four activists offered "advice" for American engagement with China on human rights. Lawyer Mo Shaoping argued for a "calibrated, strategic" approach in which the United States "frankly" states its views and criticisms in public regarding the "broad picture" of China's human rights record, while raising individual cases primarily "in private." Washington should not compromise its principles and should speak "bluntly" about China's shortcomings, Mo said. But human rights should not be linked to other issues, with human rights, trade and security issues being addressed separately and "on their own merits." "Do not be like the French," Mo declared, who are "generally reluctant" to raise human rights issues for fear of harming trade relations.

¶ 10. (C) Individual cases are most effectively addressed in private, Mo said, given that the "face" (i.e., public image or personal prestige) of Chinese leaders is involved. The development of a "personal relationship" between our respective leaders would also increase the effectiveness of raising cases in this way, Mo said. He pointed to the example of a Chinese Christian pastor whose death sentence, Mo claimed, was commuted when President Bush "quietly and

privately" raised the issue with then-President Jiang Zemin. Mo praised the approach of John Kamm's Duihua Foundation, which he said has been "quite effective" by "developing relationships" with Chinese officials and raising individual cases privately. (NOTE: Regarding the recent death penalty case of Wo Weihan, Mo said the matter was "unusual," as Mo had "not even heard of" the case until shortly before Wo's execution. Mo speculated that "national security" issues must have been involved, in light of Wo's long detention and the "secrecy" in which the case was handled.)

¶11. (C) When conducting official human rights dialogues with China, Mo said, a "hybrid" approach involving interaction with both official and unofficial actors should be employed. Foreign countries should not rely exclusively on dealing with official interlocutors, because they will not provide the "true picture." Mo cited as correct examples the German Government's inviting him to participate in a dialogue earlier this year with the Tianjin Bar Association, as well as the USG invitation to attend together with other rights lawyers a dinner in May with visiting Assistant Secretary of State for Democracy, Human Rights and Labor David Kramer. Participating in such events involves "risk" for unofficial actors like himself, Mo acknowledged, but he argued it was the only way to inject some semblance of "reality" into discussions on human rights.

¶12. (C) Professor Li agreed Washington should not be afraid to "speak frankly" on human rights, but he advocated the "prudent" application of pressure, as even activists like him do not want to see China change "because of foreign pressure." China must solve its problems on its own terms, Li averred. Li encouraged more bilateral people-to-people exchange, including on human rights, and for handling bilateral issues in a pragmatic, "case-by-case" approach. Li worried aloud about the effect on U.S.-China bilateral relations of a "narrow-minded Chinese nationalism" that is fueled by the PRC's economic "miracle," its successful hosting of the Olympic Games, and the mistaken impression that since 9/11 the United States has been "in decline" -- a perception reinforced by the current global economic crisis. At the same time, Li said "mutual distrust" on both sides about the other's long-term intentions serves to complicate bilateral interaction on human rights and other issues.

¶13. (C) Lawyer Wu Ge emphasized the need for a "pragmatic, realistic" approach to dealing with China on human rights. Both the United States and China should focus on "practical" issues such as freedom of the press and of assembly, not transforming one-Party rule by the Chinese Communist Party. By promoting these freedoms, the press can act as a "watchdog" to fight corruption and promote judicial independence, while NGOs and other civil society actors can more freely promote change at the grassroots level. Such changes take time and require patience. Therefore, when advocating change, neither the United States nor Chinese activists should "push too fast," Wu cautioned; otherwise, "others may not follow."

¶14. (C) Zhang Dajun took the most "activist" stance on the efficacy of foreign pressure. The United States must be willing to "pay a price" if it wants to pressure China to change its human rights policies, Zhang averred; otherwise, the result will be "empty talk." Chinese leaders care most about the economy, especially in the midst of the global financial crisis, which gives the United States "leverage"

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over China on human rights. Chinese Communist leaders will never simply heed "advice" from the United States or other foreign countries absent the use of such pressure and leverage, Zhang argued.

IS PROGRESS INEVITABLE?

¶15. (C) Taking an optimistic view that sparked debate with other guests, lawyer Wu Ge said it is "inevitable" that human rights conditions in China will continue to improve. Respect for human rights and "universal values" is part of a "larger global trend" (chaoliu) that simply cannot be avoided or ignored by China. The key, therefore, is to focus on practical issues and be patient, Wu asserted. Li Dun agreed that progress in China can and should be achieved incrementally, but he disagreed that advancements are "inevitable." "Nothing is for certain," Li averred, warning that it is still possible that China could "become a police state." Mo Shaoping retorted that China "already is a police state" due to the lack of procedural safeguards in the criminal justice system. Security officials can conduct intrusive searches and surveillance without a warrant and can detain persons for an extended period of time without justification, merely on their personal authority, Mo stated. Despite its problems, Li replied, the situation in China today is still much improved compared to the "super police state" that existed during the Cultural Revolution era.

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